Supreme Court, U.S.
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No. 02-61

IN THE

Supreme Court of the United States

JIANGSU SOPO CORPORATION (GROUP) LTD.,

Petitioner,

v.

BP CHEMICALS LTD.,

Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Eighth Circuit

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

Parties to the Proceeding

This is an action between an English plaintiff, BP Chemicals Ltd. ("BP Chemicals"), and Chinese defendants. BP Chemicals sued not only petitioner Jiangsu SOPO Corporation (Group) Ltd. ("SOPO"), a state-owned Chinese petrochemical company, but also SOPO's predecessor, Zhenjiang Chemical Plant, and its engineering contractor, Shanghai Petrochemical Engineering Co. ("SPECO"). SPECO failed to appear and a default was entered against it under Federal Rule of Civil Procedure 55(a) and Article 15 of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. (Court of Appeals Appendix JA-368 to JA-370, JA-374) ("C.A. App."). Following a damages hearing, a separate default judgment was entered against SPECO and it is no longer a party to the litigation. (C.A. App., JA-2573).

Rule 29.6 Statement

Respondent BP Chemicals Ltd. is 100% owned by BP Chemicals Investments Ltd., which is in turn 100% owned by BP International, Ltd., which is 100% owned by BP Amoco plc.

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Respondent BP Chemicals Ltd. ("BP Chemicals") respectfully urges this Court to deny the petition for a writ of certiorari filed by petitioner Jiangsu SOPO Corporation (Group) Ltd. ("SOPO").

OPINIONS BELOW

Petitioner SOPO seeks a writ of certiorari to review the unanimous decision of the United States Court of Appeals for the Eighth Circuit (Petitioner's Appendix A, pp. 1a-18a) ("Petitioner's App."), which reversed an order of the United States District Court for the Eastern District of Missouri granting SOPO immunity from suit under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1602, *et seq*. (Petitioner's App. B, pp. 19a-31a). The district court dismissed the case for lack of subject matter jurisdiction, ruling that BP Chemicals' trade secret lawsuit is not "based upon" commercial activity carried on by SOPO in the United States. The Eighth Circuit reversed, holding that SOPO is not immune from BP Chemicals' suit in federal court because the suit is indeed based on SOPO's commercial activity in the United States.

JURISDICTION

Respondent agrees that this Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. The Trade Secret Allegations

Respondent BP Chemicals, a British corporation, is the owner of a proprietary process for the design and construction of chemical plants for the manufacture of acetic acid, a bulk chemical. Petitioner SOPO is a Chinese, state-owned petrochemical company which owns and operates an acetic acid plant in China known as the 921 project. BP Chemicals alleges that SOPO misappropriated BP Chemicals' proprietary acetic acid technology and used and disclosed that technology in the United States to obtain equipment from experienced U.S. vendors to build the 921 plant in China.

The technology at issue was invented by Monsanto in the 1970's and sold to BP Chemicals in the mid-1980's. Both Monsanto and BP Chemicals exploited the commercial value of the technology by licensing it to other multi-national chemical companies, under tight confidentiality restrictions, for the construction of acetic acid plants worldwide. The BP Chemicals' acetic acid process is an important, world-leading technology, which accounts for nearly 70 percent of the annual worldwide production of acetic acid.

SOPO misappropriated BP Chemicals' acetic acid trade secrets in an unknown place and then set out to use the stolen technology in the United States to procure specialized chemical process equipment for the 921 plant. From 1993 to 1997, SOPO used and disclosed to U.S. vendors BP Chemicals' proprietary designs and specifications to obtain most of the major pieces of equipment for the 921 plant. While equipment fabrication was underway throughout the U.S., numerous delegations of Chinese engineers from

SOPO and SPECO (as well as from various PRC government agencies), traveled to the U.S. to visit vendor facilities.

Initially, these visits were to iron out design and other technical issues concerning the equipment. Later, the visits were for inspection, training, and testing of the equipment. In all, SOPO, using stolen copies of BP Chemicals' trade secrets, procured more than $10 million worth of chemical process equipment from more than 15 suppliers located throughout the U.S., and sent 71 people to this country to test and inspect these purchases on 17 separate visits stretching over four years.

BP Chemicals first learned of these events late in 1995 and early 1996 when it was contacted by a U.S. equipment vendor who had received a "bid package" from SOPO's engineering contractor. The bid package contained technical specifications for acetic acid equipment that bore a suspicious similarity to specifications that had been used by Monsanto and BP Chemicals in prior licensed projects. BP Chemicals investigated the matter and concluded that SOPO had obtained illegal access to BP Chemicals' proprietary acetic acid manuals. The documents sent by SOPO to U.S. vendors are, in large measure, slavish copies of documents used by BP Chemicals in prior licensed projects. In many cases, the documents replicate typographical errors contained in the original BP Chemicals specifications.

BP Chemicals filed suit in February 1999 against four defendants: SOPO, the owner and operator of the 921 acetic acid plant; Zhenjiang Chemical Plant, SOPO's predecessor; SPECO, a Shanghai-based engineering firm which acted as SOPO's agent in procuring equipment from U.S. vendors; and Nooter Corporation, a St. Louis-based equipment

supplier which contracted with SOPO's agents to fabricate equipment for the 921 plant. (C.A. App., JA-22 to JA-60). BP Chemicals sought declaratory relief and damages arising *not* from SOPO's operation of the acetic acid plant in China, but from its wrongful disclosure and use of BP Chemicals' proprietary technology in Missouri and elsewhere throughout the United States.

For nearly two years, SOPO successfully evaded service under the Hague Convention through a series of address changes and other bureaucratic entanglements in China. Eventually, when it became clear that the Chinese authorities would not serve SOPO, BP Chemicals moved for a default judgment. (C.A. App., JA-319 to JA-360). SOPO then appeared voluntarily and moved to dismiss the Amended Complaint,[1] claiming (among other things) immunity from suit under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602, *et seq*. (C.A. App., JA-361 to JA-363; JA-459 to JA-462).

B. The District Court's Decision

Notwithstanding the extensive commercial activity carried out by SOPO in the United States, the district court granted SOPO immunity under the FSIA. (Petitioner's App. B., pp. 19a-31a). The court acknowledged that SOPO's use of BP Chemicals' trade secrets to procure specialized equipment from U.S. suppliers constituted commercial, not sovereign, activity, and that this activity was substantial. (*Id*., pp. 21a, 24a-25a). Nonetheless, the district court found

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1. An amended complaint was filed in October 2000 to add claims for violation of Missouri common law. (C.A. App., JA-375 to JA-413).

that BP Chemicals' trade secret lawsuit was not "based upon" these U.S. activities, but was instead founded essentially upon commercial activity carried out in Asia. (*Id.*, p. 25a). The court therefore refused to invoke the commercial activity exception to the FSIA and dismissed the case for lack of subject matter jurisdiction. (*Id.*, p. 28a).

In reaching these conclusions, the district court disregarded BP Chemicals' theory of the case, which sought relief *not* from SOPO's operation of an illegal acetic acid plant in China, but from the separate and independent acts of trade secret misappropriation carried out in the U.S. — namely, SOPO's use and disclosure of stolen technology to procure specialty equipment from U.S. vendors. The court accepted that BP Chemicals' pleading challenged only the domestic acts of misappropriation. (Petitioner's App. B., pp. 22a-23a).

However, relying on *Saudi Arabia v. Nelson*, 507 U.S. 349 (1993), the court characterized BP Chemicals' reliance on a disclosure theory of misappropriation to be a "semantic ploy" because BP Chemicals' true claim was based on a theft theory. (Petitioner's App. B, p. 25a). In the district court's view, SOPO's use of the stolen technology to operate a plant in China was far more central to the case than its use of the technology to procure equipment from U.S. vendors. As the Eighth Circuit noted, "the district court effectively recast BP's misappropriation claim under the rubric of theft, rather than wrongful disclosure." (Petitioner's App. A, pp. 10a-11a).

A critical flaw in the district court's analysis was its assumption that BP Chemicals could not state a separate claim for trade secret misappropriation based on SOPO's disclosures to U.S. vendors:

> Contrary to BP's assertion, SOPO's activities within the United States are not sufficient to establish a cause of action. All that SOPO allegedly did in the United States was disclose BP's trade secrets to the United States vendors. This act if proved would not itself establish a trade secret misappropriation. For BP to prevail on a misappropriation theory, it would also have to show that SOPO acquired the information in an unlawful manner.

(Petitioner's App. B, p. 27a). Rather than treat the vendor disclosures as independently tortious, the court looked only to SOPO's wrongful acquisition of BP Chemicals' technology, which the court gratuitously assumed occurred somewhere in Asia. (*Id.*, pp. 27a-28a).[2]

C. The Eighth Circuit Decision

Contrary to the district court's holding, the court of appeals had little difficulty concluding that BP Chemicals' trade secret action is indeed "based upon" commercial transactions that occurred within the U.S. The court first discussed the Missouri law of trade secrets, finding

2. Contrary to SOPO's contention, there are no facts in the record from which *any* conclusion can be drawn as to where the initial theft occurred. The technology could have been leaked by BP Chemicals' licensee in Taiwan, or, equally as plausible, it could have been leaked by a former Monsanto or BP Chemicals employee living in the U.S. or Great Britain. In a recent case brought by BP Chemicals against a former licensing executive employed by both BP Chemicals and Monsanto, *BP Chemicals Ltd. v. Baloun*, No. 00-12034-FM (Bankr. W.D. Tex. Mar. 26, 2001) (Adv. No. 00-1129-FM), it was revealed, after merits discovery, that a Taiwanese company had purchased BP Chemicals proprietary manuals from this former employee and that the illegal sale had occurred in St. Louis, Missouri.

substantial support for the notion that improper acquisition and improper disclosure are alternative forms of misappropriation. The court then focused on BP Chemicals' right, as master of its complaint, to choose between a wrongful acquisition and wrongful disclosure claim:

> BP has elected to pursue a misappropriation claim against SOPO stemming from SOPO's purported wrongful *disclosure* of BP trade secrets to American engineering firms. BP might have chosen to pursue theft-type claims against SOPO, but BP elected not to do so and *that strategic, legal choice is well within BP's discretion as the master of its complaint. . . . [W]e believe the MUTSA permits a trade secret holder to pursue both theft and disclosure claims for misappropriation. One type of claim does not preclude the other.* Our review of trade secret law confirms that the MUTSA is hardly novel in this respect: *a plaintiff may premise his misappropriation claim on any or all of these alternate forms of improper conduct.*

(Petitioner's App. A, p. 9a) (first emphasis in original).

Having determined that BP Chemicals had pleaded a valid claim based on a wrongful disclosure theory, the court examined whether the claim satisfied the required nexus with the United States to invoke the commercial activity exception to the FSIA.

> We believe BP's disclosure-type MUTSA claim is "based upon" SOPO's commercial activity carried on in the United States. . . . In the course of proving [its] claim, *BP says it will demonstrate*

> *SOPO disclosed BP's trade secrets to American vendors in the United States while procuring equipment to fabricate the 921 plant. BP's MUTSA claim satisfies the required nexus with the United States because the claim is linked to SOPO's procurement activities in the United States.* Therefore, we have little difficulty concluding that an element of BP's claim is based upon events transpiring in the United States — SOPO's disclosures to American vendors.

(*Id.*, pp. 9a-10a).

Contrary to SOPO's contention, the Eighth Circuit did not distinguish between a "one element" test and a "gravamen" test. Instead, it simply applied the holding of *Saudi Arabia v. Nelson* that an "action is based upon the elements that prove the claim, no more no less." Having determined that Missouri law recognized BP Chemicals' wrongful disclosure claim and having determined that SOPO's disclosures of trade secrets to U.S. vendors "lies at the very heart of BP's action," the Eighth Circuit had no difficulty concluding that BP Chemicals' claim satisfied the required nexus with the United States because the claims are directly linked to SOPO's procurement activities in the United States. The result would have been the same whether one applied a "one element" test or a "gravamen" test.

REASONS FOR DENYING THE WRIT

Petitioner's sole basis for seeking *certiorari* is an alleged split in authority among the circuits over the proper test to be applied under clause one of the commercial activity exception of the FSIA. According to SOPO, circuit courts

are divided on this issue, with some applying a "one element test," and others applying a "gravamen test." This purported "split" is entirely contrived.

The Eighth Circuit's ruling is not in conflict with *Saudi Arabia v. Nelson* or with subsequent, and now settled, FSIA law. The court properly applied the test of *Saudi Arabia v. Nelson,* holding only that BP Chemicals' amended complaint alleged sufficient facts to overcome, as a pleading matter, SOPO's assertion of sovereign immunity. It neither creates nor widens any alleged "split" in circuit authority over the proper application of Supreme Court precedent. The case is uniquely fact-specific and presents no question of general interest or import worthy of this Court's consideration.

I.

THERE IS NO SPLIT OF AUTHORITY IN THE CIRCUITS REGARDING THE APPLICATION OF THIS COURT'S DECISION IN *SAUDI ARABIA v. NELSON*

The *Question Presented* by SOPO's petition rests on a false "split" in circuit authority regarding the application of *Saudi Arabia v. Nelson*. SOPO frames the issue in this case entirely and exclusively in terms of this phantom "split" in authority:

> Under this Court's decision in *Saudi Arabia v. Nelson*, 507 U.S. 349 (1993), does the commercial activity exception set forth in the first clause of 28 U.S.C. § 1605(a)(2) apply whenever "one element" of the plaintiff's claim is "based upon" a foreign state's commercial activity in the United

> States, without regard to the significance of that element to the claim (as held by the Eighth and Ninth Circuits), or must the commercial activity within the United States be the "gravamen" of the claim (as held by the Second, Third, and Fifth Circuits)?

(Petition, p. (i)).

In reality, none of the decisions cited in the petition holds that a court can or should ignore the significance of the foreign state's U.S. activities when determining whether such U.S. activity forms a basis of a plaintiff's claim. Rather, in each of the decisions — including the cases labeled by SOPO as "one element" cases —the lower courts adhere to this Court's direction in *Saudi Arabia v. Nelson* to look to "those elements of a claim that, if proven, would entitle a plaintiff to relief under his theory of the case." *Saudi Arabia v. Nelson*, 507 U.S. 349, 357 (1993).

Each decision supposedly representing the opposing end of a divided judiciary in fact applies *Saudi Arabia v. Nelson* in consistent fashion to the facts before it, and each recognizes that the entire case need not be based on the commercial activity of the defendant to establish jurisdiction. *See Saudi Arabia v. Nelson*, 507 U.S. at 358 n.4 ("We do not mean to suggest that the first clause of § 1605(a)(2) necessarily requires that each and every element of a claim be commercial activity by a foreign state").

For example, in *Sun v. Taiwan*, 201 F.3d 1105 (9th Cir.), *cert. denied*, 531 U.S. 979 (2000), the Ninth Circuit recognized that the whole case need not be based on the foreign state's U.S. activity to confer jurisdiction under the

FSIA. Plaintiffs were the parents of an American student who drowned in Taiwan while participating in a cultural tour sponsored by the government of Taiwan. On their claim of negligent supervision, the court found that because the U.S. activity alleged in the complaint did not form *any* element of that claim, jurisdiction under the FSIA did not exist for that claim.

As to plaintiffs' negligent misrepresentation claim, however, the court remanded for determination of whether plaintiffs sufficiently alleged a claim of negligent misrepresentation based on the tour organizers' failure, in the U.S., to take reasonable care in arranging the tour itinerary so as to avoid known dangers. *Sun*, 201 F.3d at 1110. The court of appeals' ruling in *Sun* does not represent the application of a "one element test" *or* a "gravamen test." The decision is merely a recognition that FSIA jurisdiction must be based on *some* element of U.S. activity.[3]

The Ninth Circuit's decision in *Sugimoto v. Exportadora De Sal, S.A. De C.V.*, 19 F.3d 1309 (9th Cir. 1994), is no different. That case involved a wrongful death claim based on pilot negligence occurring while a plane chartered by a Mexican government-owned entity flew from one point in Mexico to another, but crashed in the U.S. after encountering fog in U.S. airspace. In finding jurisdiction to exist, the court of appeals acknowledged, based on a routine application of *Saudi Arabia v. Nelson*, that an action is based upon

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3. Contrary to SOPO's position, the concepts of looking to an "element" of plaintiff's claim or looking to the "gravamen" of a plaintiff's claim are not mutually exclusive. They both represent a mutual rejection of the position adopted by the district court in this case that *all* of the elements of a plaintiff's claim must be based on the foreign sovereign's U.S. activity. (Petitioner's App. B, p. 27a).

commercial activity in the United States if an element of the plaintiff's claim consists of conduct that occurred in commercial activity carried on in the United States. *Sugimoto*, 19 F.3d at 1311. Because an element of plaintiffs' claim — in fact a key element — was the tortious flying of the plane in United States air space, the court held that jurisdiction existed under the FSIA. *Id.* It was a rather unremarkable proposition under the facts of the case.

The court of appeals in *Sugimoto* did not engage in the element-counting exercise posited by SOPO's petition, but rather looked to the elements of plaintiffs' claims to determine if jurisdiction existed, as it was compelled to do under this Court's pronouncement in *Saudi Arabia v. Nelson* that "[a]n action is based upon the elements that prove the claim, no more and no less." 507 U.S. at 357. As with the Eighth Circuit's decision in this case, the Ninth Circuit decisions in *Sun* and *Sugimoto* merely represent the courts' reasoned application of *Saudi Arabia v. Nelson* to the facts of the cases before it.[4]

SOPO cites three cases for the other side of the alleged split — the so-called "gravamen" test. Two of these decisions acknowledge that jurisdiction can exist if a plaintiff shows

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4. SOPO's petition omits mention of another case it would falsely tag with applying a "one element, no matter how insignificant, test." In *Goodman Holdings v. Rafidain Bank*, 26 F.3d 1143 (D.C. Cir. 1994), the court rejected the plaintiff's claim because "Goodman has not shown, as *Saudi Arabia* requires, that the domestic commercial activity constitutes an 'element[] of a claim that . . . would entitle [Goodman] to relief under [its] theory of the case.'" 26 F.3d at 1146 (inserts in original). Again, the rather unremarkable proposition that *some* element of U.S. activity must exist to confer jurisdiction under the "commercial activity" exception to the FSIA was the basis for decision.

that the domestic activity constitutes "an element" of plaintiff's claim. In *Aldy v. Valmet Paper Machinery*, 74 F.3d 72 (5th Cir. 1996), the Fifth Circuit found jurisdiction to exist over a negligent manufacture and design claim and over a failure to warn claim where the only U.S.-based element in either claim was the fact that plaintiffs were injured and died in the U.S. *Id.* at 75-76.

In *Federal Insurance Co. v. Richard I. Rubin & Co.*, 12 F.3d 1270 (3d Cir. 1993), the Third Circuit held that a claim was not based on U.S. activity where the only U.S. activity alleged was the formation of two wholly-owned subsidiaries to invest in U.S. real estate. Since the plaintiff would not need to prove that the defendant formed those corporations in order to prevail, the court found no basis for jurisdiction. *Id.* at 1289. Nonetheless, the decision acknowledged that jurisdiction could exist if such were a needed element of plaintiff's claims. *Id.*[5]

Finally, in *Drexel Burnham Lambert Group, Inc. v. Committee of Receivers for Galladari*, 12 F.3d 317 (2d Cir. 1993), the Second Circuit decided that the "gravamen" of plaintiff's claim was the sovereign's *judicial* — as opposed to commercial — activities, which had only an attenuated "effect" on the United States. *Id.* at 329-30. No meaningful element of commercial activity was even involved in that case.

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5. It bears mention that the two decisions noted above were both "clause three" cases involving allegations related to alleged "act[s] outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere . . . that causes a direct effect in the United States." In these cases, the courts did not have to engage in *any* examination of U.S.-based commercial activity at all.

As a close reading of these supposedly divergent opinions reveals, the real question presented by SOPO is whether a court must utter magic words such as "gravamen" or "foundation" somewhere in its opinion in order to comport with this Court's holding in *Saudi Arabia v. Nelson*, or whether it is sufficient that the court look to "the elements of a claim that, if proven, would entitle a plaintiff to relief" to determine if a plaintiff's claims are "based upon" significant U.S. commercial activity. That question is not one that needs asking at all, much less an answer from this Court.

II.

THE EIGHTH CIRCUIT'S RULING IS CONSISTENT WITH THIS COURT'S DECISION IN *SAUDI ARABIA v. NELSON* AND SETTLED FSIA ANALYSIS

The court of appeals' decision in this case represents a straightforward and unremarkable application of settled FSIA law in a unique factual context. The court's primary reasoning for reversing the district court was its finding that Missouri law *does* in fact recognize the independent tort of wrongful disclosure of a trade secret. (Petitioner's App. A, pp. 7a-9a). Given this finding, a plaintiff such as BP Chemicals is permitted under Missouri law to plead a claim for wrongful acquisition *or* wrongful disclosure, *or both*. (*Id.*, p. 9a). Since BP Chemicals' amended complaint pleaded a claim of wrongful disclosure based on SOPO's disclosure of BP Chemicals' trade secrets in the United States, (*id.*, pp. 9a-10a), the obvious conclusion to be drawn was that BP Chemicals' wrongful disclosure claim was "based on" SOPO's U.S. activity. (Petitioner's App. A, pp. 17a).

In reaching this decision, the Eighth Circuit did not apply a novel application of this Court's decision in *Saudi Arabia*

v. Nelson, nor did it create or widen an alleged "split" in circuit authority between courts applying a so-called "one element test" and those applying a so-called "gravamen test." Rather, the court of appeals in this case, as in all the decisions applying *Saudi Arabia v. Nelson* cited by SOPO in its petition, based its analysis on whether the U.S. connection alleged in the amended complaint was a necessary element of the plaintiff's claim.[6] Given the allegations in BP Chemicals' amended complaint about SOPO's U.S. activity and the existence of an independent cause of action under Missouri law for wrongful disclosure, it was no stretch of

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6. *See BP Chemicals Ltd. v. Jiangsu SOPO Corporation (Group) Ltd.* (Petitioner's App. A, pp. 1a-18a) (finding that facts alleged in amended complaint related to wrongful disclosure of trade secrets in the U.S. was a necessary element of plaintiff's wrongful disclosure claim); *Sun v. Taiwan*, 201 F.3d 1105 (9th Cir. 2000) (finding that plaintiffs' claim of negligent supervision related to drowning in Taiwan was not based on U.S. commercial activity but that claim of negligent misrepresentation based on statements made in U.S. might support jurisdiction); *Sugimoto v. Exportadora De Sal, S.A. De C.V.*, 19 F.3d 1309 (9th Cir. 1994) (finding jurisdiction to exist because wrongful death claim included necessary element of negligent flying while in U.S. air space); *Aldy v. Valmet Paper Machinery*, 74 F.3d 72, 75-76 (5th Cir. 1996) (finding jurisdiction to exist over claim based on negligent design and manufacture of machine in Finland where plaintiffs' deaths in the U.S. was sole domestic "element" of their claims); *Federal Insurance Co. v. Richard I. Rubin & Co.*, 12 F.3d 1270, 1289 (3d Cir. 1993) (finding jurisdiction not to exist because proving that companies were formed to invest in U.S. real estate, the sole U.S. activity engaged in by the foreign sovereign, was not a necessary element to plaintiff's claims); *Drexel Burnham Lambert Group, Inc. v. Committee of Receivers for Galladari*, 12 F.3d 317, 329-330 (2d Cir. 1993) (finding that tangential "effect" in the United States did not confer jurisdiction over claim based on noncommercial sovereign judicial activity conducted elsewhere).

the holding of *Saudi Arabia v. Nelson* to find that BP Chemicals asserted a viable claim "based on" SOPO's U.S. activities.

The Eighth Circuit did not reject any so-called "gravamen test" to find that the district court erred when it held that BP Chemicals' wrongful disclosure claim is not "based upon" SOPO's commercial activity in the United States. It merely rejected the district court's strained interpretation of what actually was the "gravamen" of one of the claims asserted by BP Chemicals. To uphold the "gravamen" test as applied by the district court would lead to the perverse result that jurisdiction over SOPO would exist if BP Chemicals had alleged only a *single claim* based on wrongful disclosure in the United States (albeit a claim which the district court erroneously failed to recognize), but that by identifying *additional* tortious activity by SOPO in the amended complaint, some of which may have occurred in China, jurisdiction over SOPO would be lost.

The Eighth Circuit's application of *Saudi Arabia v. Nelson* to the unique facts of this case does not warrant review in this Court.

III.

THIS CASE DOES NOT PRESENT AN IMPORTANT QUESTION

SOPO's bid for *certiorari* rests entirely on a manufactured "conflict" among the circuits, from which it argues *certiorari* should be granted to establish a uniform application of this Court's decision in *Saudi Arabia v. Nelson*. There is no "conflict" for this Court to resolve. The courts

of appeals are consistent in their approach to the question of whether a plaintiff's claims against a foreign sovereign are "based on" U.S. activity. From a *certiorari* standpoint, this case is not unusual or particularly important in any respect.

Nor is there any legitimate certworthy question of federal policy or statutory interpretation posited by this case. The Eighth Circuit's decision was largely fact-specific and state-law specific. As a consequence, a review of this case is unlikely to establish principles of wider applicability.

CONCLUSION

For the foregoing reasons, petitioner Jiangsu SOPO Corporation (Group) Ltd.'s petition for a writ of certiorari should be denied.

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